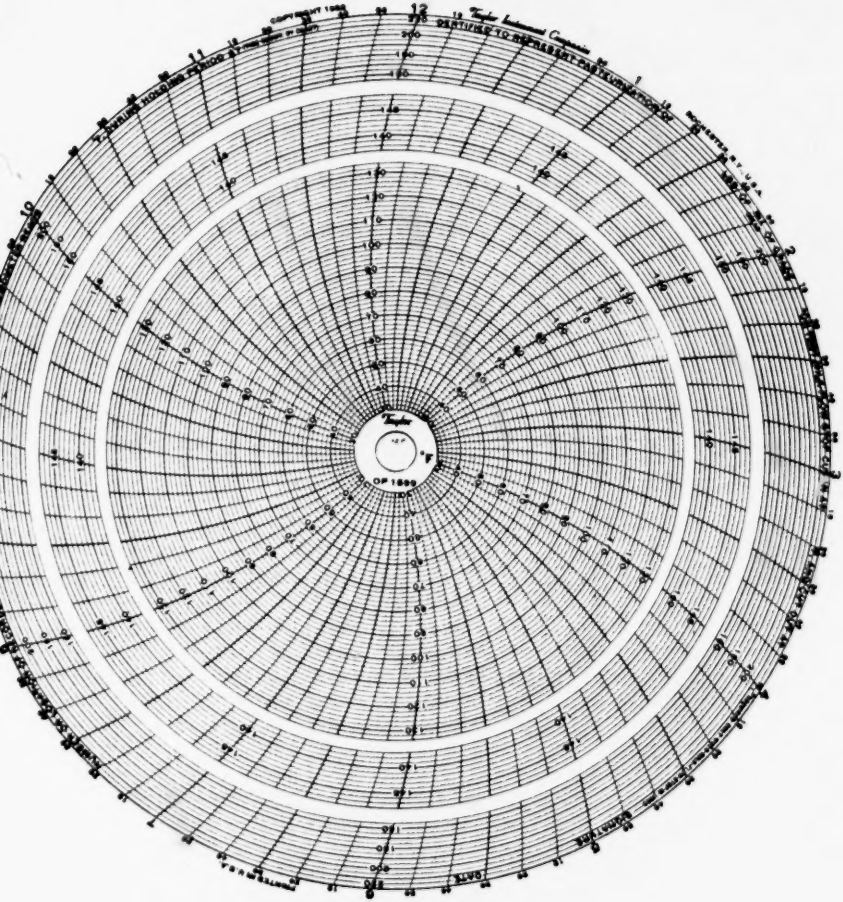
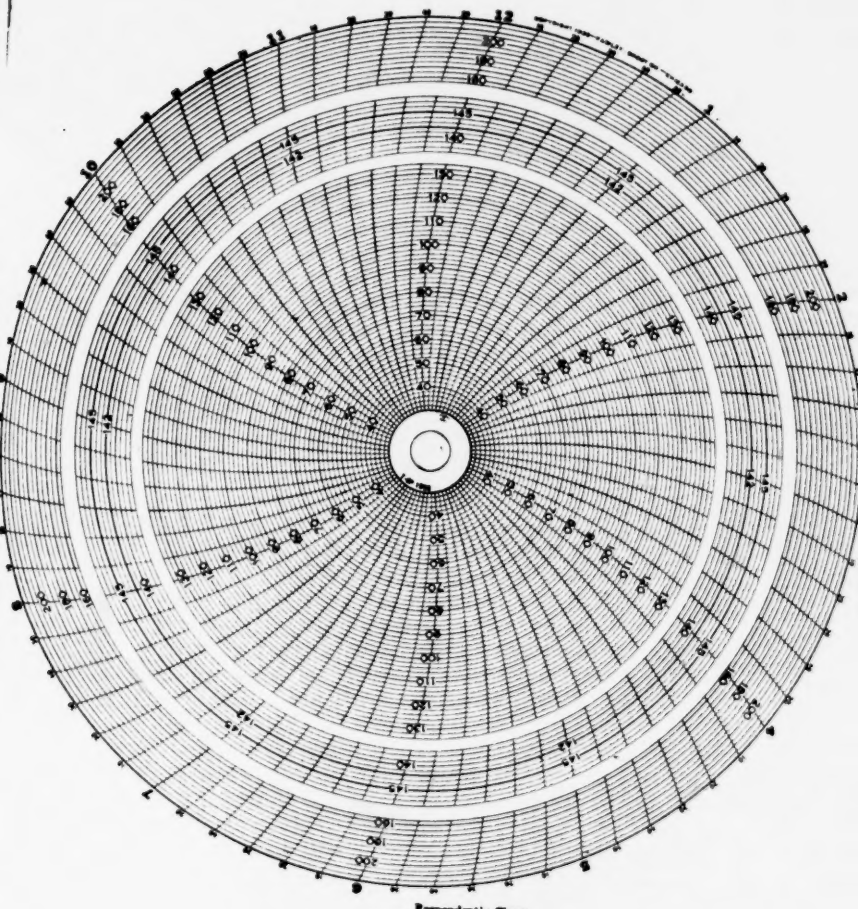
APPENDIX.



Petitioned's Chart
(Plaintiff's Exhibit B to the Complaint).



Respondent's Chart
(Plaintiff's Exhibit C-2 to the Complaint).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 689

TAYLOR INSTRUMENT COMPANIES,
Petitioner,

vs.

FAWLEY-BROST COMPANY,
Respondent.

ANSWER
TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

and

BRIEF
ADVOCATING THAT CERTIORARI BE DENIED.

ALBERT I. KEGAN,
ESTHER O. KEGAN,
Attorneys for Respondent.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

I.

The Questions Presented.

Petitioner fails to state the real questions raised by this case. They are:

(1) Does the copyright law empower the vendor of a machine to require that supplies essential to the operation

thereof, and rapidly consumed thereby, be purchased solely from it?

(a) May a rapidly consumed mechanical element of a machine be monopolized by *copyright*, under sections 4 and 5(i) of the Copyright Act?

(b) If so, does the purchase of the machine carry with it an equitable license entitling the owner, or his agent, to copy such perishable mechanical element, in order to keep the machine in operation?

(2) May the Trade-Mark Act of 1920 be used to effect a total restraint of trade in replacement parts, by preventing vendors of such parts from designating the machines for which the parts are destined?

The Circuit Court of Appeals answered question (1)(a) in the negative (R. 432), without expressly passing upon questions (1) and (1)(b). It answered question (2) in the negative (R. 434).

II.

Summary and Short Statement of the Matters Involved.

The "charts" in suit are indispensable mechanical elements of the machines manufactured by petitioner (R. 432). They are consumed in large quantities by the operation of the machine. The alleged "authorship" of petitioner and the *amici curiae* consists solely in adjusting the spacing of the lines on these charts to correspond with the dimensions of the interdependent machinery. This is a necessary step in designing the machine, and is added into the cost of the machine. It is commercially impossible for an independent printer to redesign and recalibrate the entire machine as a prerequisite to printing the charts therefor. If competition is to exist, the printer must be free to copy the worn out chart brought to him by the owner of the machine. Petitioner is using the copyright claims in

suit to force purchasers of its machines to buy replacement supplies therefor solely from it. This is an affront to the public policy of the Antitrust Laws. If the Copyright Act can be used for this purpose, then it nullifies all the decisions of this Court condemning schemes for monopolizing the sale of unpatented parts and supplies.

Respondent advertises that it manufactures charts to fit Taylor instruments of specified model numbers. It prints a style number on each chart, and three of these style numbers contain the letter "T" as a part thereof. Other instrument manufacturers print the letter "T" upon charts which cannot be used in machines of Taylor make.[1] Petitioner never prints the letter "T" upon any of its merchandise, and has no trade-mark upon that letter of the alphabet. Petitioner nevertheless contends that the foregoing conduct infringes its trade-mark, which consists of the common surname "Taylor" written as an entity in a particular style of flowing script. In the courts below, petitioner also sought to prevent respondent from referring to the style numbers which petitioner employs to distinguish its various machine models from each other. Respondent contended that petitioner was attempting to stifle legitimate competition in replacement parts and supplies, by preventing petitioner's competitors from designating the equipment for which their wares were destined (R. 16-17). The Circuit Court of Appeals held that "the authorities are rather clear * * * that defendant * * * was acting within its rights" (R. 434).

1. Cf. brief of The Brown Instrument Co., p. 5.

III.

Reasons Urged for Denying Certiorari.

1. Where the decision below is manifestly correct, and embodied in a sound, well reasoned opinion, it should not be reviewed merely because the issues are of broad public importance, and the case is one of first impression.

2. The decision of the Circuit Court of Appeals is in complete harmony with the public policy pronounced by this Court.

3. The decision below settles the law sufficiently to advise the public, the Register of Copyrights, and chart manufacturers of their respective rights and duties.

Respondent asks this Court to deny certiorari.

Respectfully,

FAWLEY-BROST COMPANY,

By ALBERT I. KEGAN,

ESTHER O. KEGAN,

Its Attorneys.